IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No. 3367 of 2005
Date of decision : 13.10.2006.

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Parties Name

Smt. Raj Kaur

..... Petitioner

vs.

Mulkha Singh

.....Respondent

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Rakesh Gupta, Advocate
for the petitioner.

Sh. D.S. Handa, Advocate
for the respondent.

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S.N. Aggarwal, J.

This order will dispose of CR No.3367 of 2005, CR No.3368 of 2005 and CR No. 3369 of 2005, as the questions of fact and of law are common and parties are also the same.

Mulkha Singh-respondent got three decrees for different amounts against Smt. Raj Kaur-petitioner on 24.3.2003. He filed the execution application. In the said execution proceedings Mulkha Singh-decree holder filed three applications under Section 60 CPC. It was prayed in one application (Annexure P-3) that the Treasury Officer be directed to remit 2/3rd portion of the pension payable to Raj Kaur-judgment debtor petitioner. In the other application (Annexure P-4), it was prayed by the respondent for directing the Post Master, Post Office, Pehowa to attach the provident fund money of

the petitioner and in the third application (Annexure P-5), it was prayed that the Treasury Officer, Pehowa be directed to attach the General Provident Fund money, bank notes, cheques, bills of exchange of Smt. Raj Kaur-petitioner. All these applications were contested by the petitioner. However, the learned Executing Court vide order dated 26.4.2005 directed the attachment of an amount of Rs. 6622.42 lying deposited in Punjab National Bank, Pehowa Branch and restrained the Manager from releasing the amount to Smt. Raj Kaur-petitioner, till further orders. The Treasury Officer was also directed to remit 2/3rd portion of the pension of Smt. Raj Kaur-petitioner to the respondent decree holder till the realisation of the decretal amount. The Post Master, Post Office, Pehowa was also directed to attach the amount of provident fund of the judgment debtor lying in Post Office, Pehowa.

All the three revision petitions are directed against this order dated 26.4.2005 passed by the learned Executing Court in all the three execution proceedings.

The submission of the learned counsel for the petitioner was that the petitioner has no objection regarding the attachment of Rs.6622.42 P. lying deposited in the Punjab National Bank, Pehowa Branch.

However, it was submitted that neither the pension payable to Smt. Raj Kaur – petitioner could be attached, nor the Post Master, Post Office, Pehowa could be directed to attach the amount of General Provident Fund money payable to the petitioner.

In support of this submission, reference was made by learned

counsel for the petitioner to the provisions of Section 11 of the Pensions Act, 1871 and to Sections 2 (a), 3 & 4 of Provident Funds Act, 1925. Reliance was also placed on the judgments of the Hon'ble Supreme Court reported as **Union of India vs. Radha Kissan Agarwalla** AIR 1969 SC 762, **Union of India vs. Jyoti Chit Fund and Finance & others** AIR 1976 SC 1163 and **Union of India and another vs. Wing Commander R.R. Hingorani (Retd.)** AIR 1987 SC 808.

On the other hand, learned counsel for the respondent submitted that the amount which has been received by the petitioner looses its character of being pension or gratuity/provident fund and therefore, is liable to be attached. Reliance was placed on the judgment of this Court reported as **Ram Kanvar vs. M/s. Ram Ricchhpal Banarsi Dass** AIR 2003 P&H 38. Reliance was also placed on the judgments reported as **S. Nagappa vs. K.P. Hanumappa** 2005 (2) Latest Judgment Reporter 507 and **P.O. Madhavan Nambiar vs. Syndicate Bank** AIR 1991 Kerala 367.

The Hon'ble Supreme Court was pleased to observe in **Radha Kissan Agarwalla's case** (supra), where similar proposition of law had come up for consideration, as under :-

> "5. The Railway Administration was in respect of the Provident Fund money in the position of a trustee for Browne and it had undertaken to discharge its obligation by arranging to have the amount converted into sterling and to remit it to Browne. Under Section 60(1) (k) of the Code of Civil Procedure, 1908, read with Section 3 of the

Provident Funds Act, 1925, the compulsory deposit in any recognised Provident Fund Account is exempt from attachment in execution of a decree of a Civil Court. Section 3 (1) of the Provident Funds Act, 1925, provides:

"A compulsory deposit in any government or Railway Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on, any such compulsory deposit"

The Reserve bank was, as already stated, the agent of the Railway Administration for conversion of the amount into sterling and was not the agent of Browne to receive the amount on his behalf. So long as the money remained under the control of the Railway Administration as provident fund money, it was exempt from attachment."

That view of law was reiterated by the Hon'ble Supreme Court in **Jyoti Chit Fund's case** (supra) as under :-

"11. We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the

> employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought. We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possibly be entertained on this question, the decision in Radha Kissen, (1969) 3 SCR 28 = (AIR 1969 SC 762) erases them. Indeed, our case is a fortiori one, on the facts. A bare reading of Radha Kissen makes the proposition fool-proof that so long as the amounts are Provident Fund dues then, till they are actually paid to the government servant who is entitled to it on retirement or otherwise, the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and overrule the contention."

It was also held in **R.R. Hingorani's case** (supra) that pension could not be attached in view of the provisions of Section 11 of the Pensions Act, 1871.

Therefore, the law has been settled by the Hon'ble Supreme Court that pension cannot be attached. Therefore, the impugned order dated 26.4.2005 passed by the learned Executing Court by which the Treasury Officer has been directed to deduct 2/3rd portion of pension of Smt. Raj Kaur and to remit the same to the decree holder, is illegal.

It has also been settled by the Hon'ble Supreme Court in

Radha Kissan Agarwalla's case (supra) and in **Jyoti Chit Fund's case** (supra) that amount of Provident Fund can also not be attached. It may be attached after it reaches the hands of the beneficiary because it looses the character of Provident Fund after it reaches the hands of the beneficiary. In the present case the amount is lying in the Post Office, which is an agent of the Government through which the payment of General Provident Fund is made to the beneficiary. Therefore, this amount has not yet reached the hands of the beneficiary and has not lost the character of being the amount of General Provident Fund.

However, if the respondent proves in the learned Executing Court that the amount of General Provident Fund is lying deposited in the Post Office in the personal account of the petitioner, then he will be entitled to seek attachment of that amount.

Since the law has been settled by the Hon'ble Supreme Court in the judgments referred to above, therefore, the judgments relied upon by the learned counsel for the respondent-decree holder do not require any discussion.

In view of the discussion held above, this petition is accepted. The impugned order dated 26.4.2005 passed by the Executing Court suffers from illegality as discussed above and is accordingly, set aside.

Disposed of.

(S.N.Aggarwal)
Judge

October 13 , 2006.
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